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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,166	03/10/2004	Gavriel Vexler	8110-0002	9542
39207	7590	07/13/2005	EXAMINER	
SACCO & ASSOCIATES, PA P.O. BOX 30999 PALM BEACH GARDENS, FL 33420-0999			NGUYEN, CHAU N	
			ART UNIT	PAPER NUMBER
			2831	

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/799,166

**Applicant(s)**

VEXLER ET AL.

**Examiner**

Chau N. Nguyen

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35,37,39-81 and 83-85 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-35,37 and 39-81 is/are allowed.
- 6) ☒ Claim(s) 83-85 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/10/04
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 83 and 84 are rejected under 35 U.S.C. 102(b) as being anticipated by Mottine et al. (6,147,309).

Mottine et al. discloses a communication cable comprising four twisted pairs of insulated wires, each comprising a conductor, at least one

inner layer encasing the conductor, and an outer layer encasing the inner layer, and an outer jacket encasing the twisted pairs, and wherein the cable has a flame travel of less than 5.0 feet, a peak smoke development of less than 0.50 and an average smoke development of less than 0.15 (col. 4, lines 27-31). Noted since the cable of Mottine et al. comprises structure and material as claimed in claim 83, the cable would at least meet Category 6 performance requirements. Mottine et al. also discloses the inner layer comprising at least about 35% width of the inner and outer layer combined (see Figure 3) (re claim 84).

3. Claim 83 is rejected under 35 U.S.C. 102(e) as being anticipated by Ebrahimian et al. (6,492,453).

Ebrahimian et al. discloses a communication cable comprising four twisted pairs of insulated wires, each comprising a conductor, at least one inner layer encasing the conductor, and an outer layer encasing the inner layer, and an outer jacket encasing the twisted pairs, and wherein the cable has a flame travel of less than 5.0 feet, a peak smoke development of less than 0.50 and an average smoke development of less than 0.15 (col. 1, lines 55-58; Table 3, test #5). Noted that the cable of Ebrahimian et al. would at

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least meet Category 6 performance requirements since it comprises structure and material as claimed in claim 83.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 83 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glew in view of Ebrahimian et al.

Glew discloses a communication cable comprising four twisted pairs of insulated wires, each comprising a conductor, at least one inner layer encasing the conductor, an outer layer encasing the inner layer, and an outer jacket encasing the twisted pairs. Glew does not disclose the cable having a flame travel of less than 5.0 feet, a peak smoke development of less than 0.50 and an average smoke development of less than 0.15 nor the inner layer being a nano-composite layer comprising nano-sized platelets and a flame and smoke retardant additive package dispersed within a polyolefin matrix. Ebrahimian et al. discloses a nano composition comprising nano-sized platelets and a flame and smoke retardant additive package dispersed within a polyolefin matrix and a cable comprising such composition so that the cable can have a flame travel of less than 5.0 feet, a peak smoke development of less than 0.50 and an average smoke development of less than 0.15. It would have been obvious to one skilled in the art to use the composition as taught by Ebrahimian et al. for the inner layer of Glew so that the cable could pass all the electrical and smoke requirements of NFPA 262 which requires a cable to have a flame travel of less than 5.0 feet, a peak smoke development of less than 0.50 and an average smoke development of less than 0.15.

***Allowable Subject Matter***

7. Claims 1-35, 37, and 39-81 are allowed.

***Response to Arguments***

Applicant's arguments filed May 20, 2005 have been fully considered but they are not persuasive. Applicant primarily argues that neither Mottine et al., Ebrahimian et al., nor Glew discloses that the cable at least meets Category 6 performance requirements. This argument is not found persuasive. Mottine et al., Ebrahimian et al. and Glew, each respectively discloses the cable comprising structure and material as claimed in claim 83. Accordingly, the cable of Mottine et al., Ebrahimian et al. and Glew would at least meet Category 6 performance requirements. To patentably distinguish the claimed invention from the prior art, the claimed invention must result in **a structural difference** between the claimed invention and the prior art.

***Summary***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### *Communication*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chau N. Nguyen whose telephone number is 571-272-1980. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dean Reichard can be reached on 571-272-2800 ext 31. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Chau N Nguyen  
Primary Examiner  
Art Unit 2831